

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) BENEFIT BANK,)
v. Plaintiff,) NO. CIV-09-1043-HE
)
(1) J.E. WHEELER ENERGY COMPANY, LLC;)
(2) JACK E. WHEELER;)
(3) SOONER TOOL COMPANY, f/k/a)
SPARKS OIL PROPERTIES, INC.; and)
(4) WHEELER & SONS OIL & GAS, LLC;)
(5) WHEELER & SONS EXOTIC GAME)
RANCH, LLC; and)
(6) FIRST ENTERPRISE BANK,)
Defendants.)

SUMMARY JUDGMENT

ON the 31 day of May, 2011, came on for consideration the Motion for Summary Judgment (the "Motion") [Doc. No. 163] of Defendant, First Enterprise Bank ("FEB"), against Defendants, Jack E. Wheeler individually ("Wheeler") and Wheeler & Sons Exotic Game Ranch, LLC ("Wheeler & Sons"). The Court has previously entered an Order granting the Motion in favor of FEB [Doc. No. 173]. Based upon the Court's previous ruling and the approval for entry by all parties of record, judgment is hereby entered as follows:

The Court finds that the allegations contained in the Answer and Cross-Claims of FEB [Doc. No. 144] are true and correct, and that FEB is entitled to judgment against Defendants Wheeler and Wheeler & Sons for the principal sum of \$1,211,816.38,

together with accrued interest thereon in the aggregate sum of \$28,068.81 as of March 15, 2011, and accruing thereafter at the per diem rate of \$218.80 to the date of judgment; post-judgment interest thereafter at the rate set forth in the Note until paid; late charges; and all other expenses (including costs associated with FEB's purchase of the Benefit Mortgages), fees (including payment of Receiver's fees and expenses of \$10,347.23), charges, advances and costs (\$60,000.00), including a reasonable attorney's fee.

The Court further finds that FEB shall have and recover judgment *in personam* against Defendant, Jack E. Wheeler individually, and *in rem* against Wheeler & Sons Exotic Game Ranch, LLC, in the principal sum of \$1,211,816.38, together with accrued interest thereon in the aggregate sum of \$28,068.81 as of March 15, 2011, and accruing thereafter at the per diem rate of \$218.80 to the date of judgment (less any applicable credits); post-judgment interest thereafter at the rate set forth in the Note until paid; late charges; and all other expenses, fees, charges, advances and costs, including a reasonable attorney's fee, and the amounts due on the Benefit Bank Mortgages.

The Court further finds that FEB is the owner and holder of the Note identified in FEB's Answer and Cross-Claims [Doc. No. 144] and FEB's Motion [Doc. No. 163], and that there is a balance due, owing and unpaid thereon as stated above.

The Court further finds that defaults have occurred under the terms and conditions of said Note and the Mortgages described herein, as alleged in FEB's Answer and Counterclaim and the Motion, and that FEB is entitled to foreclosure of the Mortgages sued upon in this cause as against all Defendants in this cause, and each of them.

The Court further finds that the mortgage liens of Benefit Bank, as assigned to FEB by Assignment of Mortgage dated January 26, 2011, more particularly described as follows: (i) Mortgage with Power of Sale dated September 15, 2008, and filed with the records of the Kingfisher County Clerk on September 26, 1008 in Book 2241, at Page 220; (ii) Mortgage with Power of Sale dated November 19, 2007, and filed with the records of the Kingfisher County Clerk on December 17, 2007 in Book 2186, at Page 141; and, (iii) as modified by a Modification of Mortgage filed with the records of Kingfisher County Clerk on January 5, 2009 in Book 2262, at Page 75 (collectively, the "Assigned Mortgages"), are first and valid and superior liens securing the total sum of \$450,534.27, on the following-described real estate owned by Wheeler & Sons:

The SE/4 of Section 9, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma; and

The North Half of the SW/4 and NW/4 of Section 10, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma; and

The NE/4 of Section 16, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma.

The Court further finds that the mortgage liens of FEB, more particularly described as follows: (i) Mortgage dated September 18, 2009 (as modified October 16, 2009), recorded January 11, 2010 at Book 2319 Page 211 (refiled at Book 2322, Page 278); (ii) Mortgage Modification dated October 16, 2009, recorded March 12, 2010 at Book 2329, Page 132; and; (iii) Mortgage dated March 13, 2010, recorded March 15, 2010 at Book 2329, Page 174 (collectively, the "FEB Mortgages"), are first and valid and

superior liens securing the total sum owed by Wheeler to FEB on the above-described real estate, subject to the Assigned Mortgages.

The Court further finds that the allegations contained in FEB's Motion substantiate the absence of any material disputed facts, establish all elements of FEB's claims against Wheeler and Wheeler & Sons, and should be, and is hereby, granted.

The Court further finds that the Assigned Mortgages and the FEB Mortgages (collectively, the "Mortgages") owned, held and sued upon by FEB herein expressly waive appraisement or not, at the option of the owner and holder thereof, such option to be exercised at the time judgment is rendered herein, and that FEB elects to have such property sold with appraisement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that FEB shall have and recover judgment *in personam* against Defendant, Jack E. Wheeler individually, and *in rem* against Wheeler & Sons Exotic Game Ranch, LLC, in the current principal sum of \$1,155.714.79, together with accrued interest thereon in the aggregate sum of \$38,017.82 as of May 1, 2011, and accruing thereafter at the per diem rate of \$208.70 to the date of judgment; post-judgment interest thereafter at the rate set forth in the Note until paid; late charges; and all other expenses, fees, charges, advances and costs, including a reasonable attorney's fee, together with the amounts due on the Assigned Mortgages (\$450,534.27 principal, plus accrued interest to April 29, 2011 at the judgment rate in the amount of \$11,957.95, and such interest continuing to accrue thereon, until paid, at the applicable rate).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amounts described above are secured by said Mortgages and constitute first, prior and superior liens on the real estate, premises and improvements and appurtenances located in Kingfisher County, Oklahoma, more particularly described as follows:

The SE/4 of Section 9, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma; and,

The North Half of the SW/4 and NW/4 of Section 10, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma; and,

The NE/4 of Section 16, Township 18 North, Range 5 West, Indian Meridian, Kingfisher County, Oklahoma,

and that any all right, title or interest which all Defendants, or either of them, have or claim to have, in and to said real estate and premises is subsequent, junior and inferior to the Mortgages and liens of FEB, except for unpaid real property ad valorem taxes and/or special assessments which are superior as a matter of law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgages and liens of FEB, in the amounts hereinabove found and adjudged, be foreclosed, and a special execution and order of sale issue out of the office of the Court Clerk in this cause, directed to the United States Marshal to levy upon, advertise and sell, after due and legal appraisement, the real estate and premises hereinabove described, subject to unpaid taxes, advancements for FEB for taxes, insurance premiums or expenses necessary for the preservation of the subject property, if any, and pay the proceeds of said sale to the Clerk of this Court, as provided by law, for application as follows:

First, to the payment of the Receiver's fees and expenses in the amounts of \$8,562.50 and \$1,194.92, respectively, as approved by Order of the Court dated May 18, 2011 [Doc. No. 174];

Second, to the payment of the costs herein accrued and accruing;

Third, to the payment of the judgment and liens of FEB in the amounts herein set forth (including the Assigned Mortgages), and any advancements by FEB for taxes, insurance premiums or expenses necessary for the preservation of the subject property, including, without limitation, previously paid Receiver's fees in the amount of \$10,347.23;

Fourth, to the payment of any third-party fee and expenses, including a reasonable attorney's fee as of the date of this Judgment in the amount of \$32,145.00; and,

Fifth, the balance, if any, to be paid to the Clerk of this Court to await the further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon confirmation of said sale, Defendants herein, and each of them, and all persons claiming by, through or under them since the commencement of this action, be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate or equity of redemption in and to said real estate and premises, or any part thereof.

IT IS SO ORDERED.

Dated this 31st day of May, 2011.



JOE HEATON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO ENTRY:

D Benham Jr.

D. Benham Kirk, Jr., OBA #5044
Melinda J. Martin, OBA#5737
SCOGGINS & CROSS, PLLC
201 Robert S. Kerr, Suite 710
Oklahoma City, OK 73102
(405) 239-4300
(405) 239-4305 (fax)
Email: dbkirk@okhealthlawyer.com
ATTORNEYS FOR DEFENDANT,
FIRST ENTERPRISE BANK

John D. Stiner, OBA #18148
McAFEE & TAFT A Professional Corporation
211 N. Robinson, 10th Floor
Oklahoma City, OK 73102-7103
(405) 235-9621
(405) 235-0439 (fax)
Email: john.stiner@mcafeetaft.com
ATTORNEY FOR PLAINTIFF

L. Win Holbrook

L. Win Holbrook, OBA #4284
ANDREWS DAVIS
100 N. Broadway, Suite 3300
Oklahoma City, OK 73102
(405) 235-8735
(405) 235-8786 (fax)
Email: wholbrook@andrewsdavis.com
RECEIVER

APPROVED AS TO ENTRY:

D. Benham Kirk, Jr., OBA #5044
Melinda J. Martin, OBA#5737
SCOGGINS & CROSS, PLLC
201 Robert S. Kerr, Suite 710
Oklahoma City, OK 73102
(405) 239-4300
(405) 239-4305 (fax)
Email: dbkirk@okhealthlawyer.com

**ATTORNEYS FOR DEFENDANT,
FIRST ENTERPRISE BANK**

SAD

John D. Stiner, OBA #18148
McALEE & TAFT A Professional Corporation
211 N. Robinson, 10th Floor
Oklahoma City, OK 73102-7103
(405) 235-9621
(405) 235-0439 (fax)
Email: john.stiner@mcafeetaft.com

ATTORNEY FOR PLAINTIFF

L. Win Holbrook, OBA #4284
ANDREWS DAVIS
100 N. Broadway, Suite 3300
Oklahoma City, OK 73102
(405) 235-8735
(405) 235-8786 (fax)
Email: wholbrook@andrewsdavis.com

RECEIVER